

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

FERDINANDO DISCIPIO	:	DOCKET NO. 2:05-cv-276 Section P
VS.	:	JUDGE MINALDI
ALBERTO GONZALEZ¹	:	MAGISTRATE JUDGE WILSON

SUPPLEMENTAL REPORT AND RECOMMENDATION

Currently before the court is a “Complaint for Declaratory Relief and Petition for Writ of Habeas Corpus” filed on behalf of petitioner, Ferdinando Discipio. By this complaint and petition, the petitioner challenges his detention as unlawful and seeks his release from custody. This matter has been referred to the undersigned magistrate judge for review, report, and recommendation in accordance with 28 U.S.C. § 636(b)(1)(B).

Petitioner filed this petition on February 10, 2005 seeking to obtain his release from post-removal-order custody pending the outcome of his appeal before the Fifth Circuit Court of Appeals. In support of his petition, the petitioner argues that he has been detained beyond the presumptively reasonable six month removable period and that the government is not likely to effect his removal in the reasonably foreseeable future.

Following the initial review of this matter, the undersigned issued a Report and Recommendation finding that petitioner’s detention was lawful. [doc. 5]. Since the issuance of the

¹Pursuant to Fed. R.Civ.P. Rule 25(d), the court has substituted Alberto Gonzalez for John Ashcroft as the named respondent.

original Report and Recommendation in this case, the government has come forward with summary judgment evidence which establishes that petitioner was released from post-removal-order detention to an Order of Supervision on May 12, 2005. *See* doc. 12, exhibit 1. In light of petitioner's release, the government requests that this petition be denied and dismissed as moot.

Because the summary judgment type evidence before the court establishes that petitioner is no longer in custody, the court finds that his challenge to his post-removal-order detention is now moot and should be dismissed.

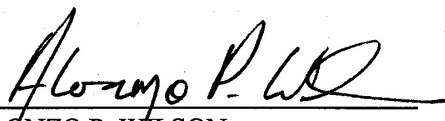
Accordingly,

IT IS RECOMMENDED that the petition be DENIED and DISMISSED as moot.

Under the provisions of 28 U.S.C. §636(b)(1)(C), the parties have ten (10) business days from receipt of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING ON APPEAL, EXCEPT UPON GROUNDS OF PLAIN ERROR, THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT COURT.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 22nd day of July, 2005.


ALONZO P. WILSON
UNITED STATES MAGISTRATE JUDGE